

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

RICHARD G. TURAY,

Plaintiff,

v.

KELLY CUNNINGHAM, et al.,

Defendants.

No. C10-5493BHS

ORDER

This matter comes before the Court on the Report and Recommendation (“R&R”) of the Honorable Karen L. Strombom, United States Magistrate Judge (Dkt. 33), Plaintiff Richard G. Turay’s (“Turay”) objections to the R&R (Dkt. 35) and Defendants’ response to the objections (Dkt. 36). The Court has considered the R&R, Turay’s objections and Defendants’ response, and the remaining record, and re-refers this action to the magistrate judge for further consideration of Defendants’ motion for summary judgment for the reasons stated herein.

I. PROCEDURAL AND FACTUAL HISTORY

Turay is currently a resident at the Special Commitment Center (“SCC”). This matter arises out of Defendants’ involvement in the denial of Turay’s request for an escorted leave from the SCC to attend his father’s funeral. On August 3, 2010, Turay filed a civil rights complaint against Defendants pursuant to 42 U.S.C. § 1983. Dkt. 5. In his complaint, Turay alleges claims against Defendants for violations of the Eighth Amendment to the

1 United States Constitution based on cruel and unusual punishment, violations of the
2 Fourteenth Amendment to the United States Constitution based on lack of equal protection,
3 violations of the First Amendment to the United States Constitution based on retaliation,
4 violations of the “United Nations Convention Against Torture,” and personal participation
5 on the part of certain defendants in causing the deprivation of Turay’s protected
6 constitutional rights. Dkt. 5.

7 On December 9, 2010, Defendants filed a motion for summary judgment. Dkt. 25.
8 Turay failed to respond to the motion. On January 20, 2011, the magistrate judge issued the
9 R&R addressing the merits of Turay’s claims and recommending that Defendants’ motion
10 for summary judgment be granted and Turay’s claims be dismissed with prejudice. The
11 magistrate judge also noted that the Court could deem Turay’s failure to respond to
12 Defendants’ motion as an admission that the motion has merit. *Id.* at 1 (citing Local Rule
13 CR 7(b)(2) which states that “[i]f a party fails to file papers in opposition to a motion, such
14 failure may be considered by the court as an admission that the motion has merit”). On
15 February 9, 2011, Turay filed objections to the R&R (Dkt. 35) and on February 11, 2011,
16 Defendants responded to his objections (Dkt. 36).

17 II. DISCUSSION

18 Turay’s only substantive objection to the R&R is his allegation that the magistrate
19 judge misconstrued the Ninth Circuit’s holding in *Hydrick v. Hunter*, 500 F.3d 978 (9th Cir.
20 2000), regarding the rights of a sexually violent predator (“SVP”) who is civilly committed
21 following the completion of a sentence for a criminal conviction. Dkt. 35. Turay argues
22 that because he is detained under a civil commitment, he should be entitled to the same
23 rights as all others who are civilly committed. *Id.* (citing *Youngberg v. Romeo*, 457 U.S.
24 307, 318 (1982)). In 2009, the United States Supreme Court vacated the Ninth Circuit’s
25 opinion in *Hydrick* (*see Hunter v. Hydrick*, 129 S. Ct. 2431 (2009)) and remanded the case
26 for consideration following the decision in *Ashcroft v. Iqbal*, 129 S. Ct. 1937 (2009).


27 Because the magistrate judge appears to have at least partially relied on the Ninth Circuit’s

1 *Hydrick* opinion in the R&R granting Defendants' motion for summary judgment, the Court
2 concludes that this action should be re-referred to the magistrate judge for consideration of
3 Defendants' motion for summary judgment in light of the Supreme Court's holding in
4 *Hunter*, 129 S. Ct. 2431.

5 **III. ORDER**

6 Therefore, the Court hereby **RE-REFERS** this action to the magistrate judge for
7 further consideration of Defendants' motion for summary judgment as discussed herein.

8 DATED this 22nd day of March, 2011.

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11 BENJAMIN H. SETTLE
12 United States District Judge
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